

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Zaid Adams,)	C/A No.: 5:12-cv-00479-GRA
)	
Plaintiff,)	
)	
v.)	ORDER
)	
South Carolina Department of)	
Corrections, Sgt. James Heyward, and)	
Ofc. Fernandez Richberg,)	
)	
Defendants.)	
)	

This matter comes before the Court for review of United States Magistrate Judge Kaymani D. West's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(d), D.S.C., and filed on October 15, 2012. Plaintiff Zaid Adams ("Plaintiff") commenced this action on February 15, 2012, pursuant to 42 U.S.C. § 1983.¹ On July 20, 2012, Defendant South Carolina Department of Corrections ("Defendant SCDC") filed a Motion to Dismiss. Plaintiff filed a Response in Opposition to the Motion to Dismiss on August 15, 2012. Under established local procedure in this judicial district, Magistrate Judge West made a careful review of the *pro se* complaint pursuant to the procedural provisions of 28 U.S.C. § 1915, 28 U.S.C. § 1915A, and the Prison Litigation Reform Act. Magistrate Judge West recommends that this Court dismiss Plaintiff's claims against Defendant SCDC. The Court adopts the Magistrate Judge's Report and Recommendation in its entirety.

¹ Prisoner petitions are deemed filed at the time that they are delivered to prison authorities for mailing to the court clerk. *Houston v. Lack*, 487 U.S. 266, 276 (1988).

Plaintiff brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.* In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198 (4th. Cir. 1983). In this case, Plaintiff filed objections to the Report and Recommendation on October 29, 2012.

In his objections, Plaintiff states that (1) he amended the Complaint to dismiss Defendant SCDC; thus, the Eleventh Amendment is not implicated in this case; (2) Defendant SCDC is no longer a defendant; therefore, he is suing Defendants Heyward and Richberg only in their individual capacities; and (3) "plaintiff is now sueing [sic] the defendants only in their individual capacity, and no longer in their official capacity." ECF No. 79. Specifically, Plaintiff argues that his claims should not be dismissed, because he has amended his Complaint to remove Defendant SCDC. Thus, Plaintiff appears to actually agree with the Report and Recommendation. Magistrate Judge West does not recommend

that the entire suit be dismissed; rather, she recommends only that Plaintiff's claims against Defendant SCDC be dismissed. Plaintiff's claims against Defendants Heyward and Richberg will not be dismissed if this Court adopts the instant Report and Recommendation and grants Defendant SCDC's Motion.

After a review of the record, this Court finds that the Magistrate Judge's Report and Recommendation accurately summarizes this case and the applicable law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that Defendant SCDC's Motion to Dismiss is GRANTED.

IT IS SO ORDERED.



G. Ross Anderson, Jr.
Senior United States District Judge

December 12, 2012
Anderson, South Carolina